

determination was forwarded for posting.

(3) If no written request for hearing or written objection is received in the office of the administrative judge within the forty (40) days of issuance of the notice, the administrative judge shall issue a final order declaring the preliminary determination to be final thirty (30) days from the date on which the final order is mailed to each party in interest.

(c) When the administrative judge determines either before or after issuance of a preliminary determination that there are issues which require resolution, or when a party objects to the preliminary determination and/or requests a hearing, the administrative judge may either resolve the issues informally or schedule and conduct a prehearing conference and/or a hearing. Any prehearing conference, hearing, or rehearing, conducted by the administrative judge shall be governed insofar as practicable by the regulations applicable to other hearings under this part and the general rules in subpart B of this part. After receipt of the testimony and/or evidence, if any, the administrative judge shall enter a final order determining the heirs of the decedent, which shall become final thirty (30) days from the date on which the final order is mailed to each party in interest.

(d) The final order determining the heirs of the decedent shall contain, where applicable, the names, birth dates, relationships to the decedent, and shares of heirs, or the fact that the decedent died without heirs.

[56 FR 61383, Dec. 3, 1991; 56 FR 65782, Dec. 18, 1991; 57 FR 2319, Jan. 21, 1992, as amended at 64 FR 13363, Mar. 18, 1999]

§ 4.353 Record.

(a) The administrative judge shall lodge the original record with the Project Director.

(b) The record shall contain, where applicable, the following materials:

(1) A copy of the posted public notice of preliminary determination and/or hearing showing the posting certifications, the administrative judge's certificate of mailing, the posting certificates, and the Project Director's certificate of mailing.

(2) A copy of each notice served on parties in interest, with proof of mailing;

(3) The record of evidence received, including any transcript made of testimony;

(4) Data for heirship finding and family history, and data supplementary thereto;

(5) The final order determining the heirs of the decedent and the administrative judge's notices thereof; and

(6) Any other material or documents deemed relevant by the administrative judge.

§ 4.354 Reconsideration or rehearing.

(a) Any party aggrieved by the final order of the administrative judge may, within thirty (30) days after the date of mailing such decision, file with the administrative judge a written petition for reconsideration and/or rehearing. Such petition must be under oath and must state specifically and concisely the grounds upon which it is based. If it is based upon newly discovered evidence, it shall be accompanied by affidavits of witnesses stating fully what the new evidence or testimony is to be. It shall also state justifiable reasons for the prior failure to discover and present the evidence.

(b) If proper grounds are not shown, or if the petition is not filed within the time prescribed in paragraph (a) of this section, the administrative judge shall issue an order denying the petition and shall set forth therein the reasons therefor. The administrative judge shall serve copies of such order on all parties in interest.

(c) If the petition appears to show merit, or if the administrative judge becomes aware of sufficient additional evidence to justify correction of error even without the filing of a petition, or upon remand from the Board following an appeal resulting in vacating the final order, the administrative judge shall cause copies of the petition, supporting papers, and other data, or in the event of no petition an order to show cause or decision of the Board vacating the final order in appropriate cases, to be served on all parties in interest. The parties in interest will be allowed a reasonable, specified time within which to submit answers or